

ARKANSAS SUPREME COURT

No. CR 08-431

JOSEPH POLIVKA
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered December 4, 2008

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL AND
FOR EXTENSION OF BRIEF TIME
[CIRCUIT COURT OF GARLAND
COUNTY, CR 2004-699, HON. JOHN H.
WRIGHT, JUDGE]

MOTION FOR APPOINTMENT OF
COUNSEL DENIED; MOTION FOR
EXTENSION OF TIME GRANTED.

PER CURIAM

In 2006, appellant Joseph Polivka entered a plea of guilty to being a felon in possession of a firearm and two counts of attempted first-degree murder. He was sentenced by a jury to an aggregate term of 1140 months' imprisonment that included a sentence enhancement under the felony-firearm statute. The Arkansas Court of Appeals affirmed. *Polivka v. State*, CACR 06-1337 (Ark. App. Sept. 12, 2007). Subsequently, appellant timely filed in the trial court a verified pro se petition under Arkansas Rule of Criminal Procedure 37.1. The circuit court denied the petition, and appellant has lodged a pro se appeal here from the order.

Appellant was previously granted an extension of time to file his brief-in-chief, which was due to be filed on June 2, 2008. Before the time to file the brief had elapsed, appellant filed the instant pro se motion for an additional extension of time to file his brief, and the motion for appointment of counsel.

Postconviction matters, such as petitions pursuant to Rule 37.1, are considered civil in nature with respect to the right to counsel, and there is no absolute right to appointment of counsel in civil matters. *See Virgin v. Lockhart*, 288 Ark. 92, 702 S.W.2d 9 (1986) (per curiam). Nevertheless, this court has held that if an appellant makes a substantial showing that he is entitled to relief in a postconviction appeal and that he cannot proceed without counsel, we will appoint counsel. *See Howard v. Lockhart*, 300 Ark. 144, 777 S.W.2d 223 (1989) (per curiam). Here, the motion did not address the merits of his postconviction claim, and appellant failed to make a substantial showing that he is entitled to appointment of counsel.

Appellant additionally seeks an extension of time in order for appointed counsel to finalize the appeal. Although appellant has not shown an entitlement to appointment of counsel, we grant the motion for extension of time. The brief is due here fifteen days from the date of this opinion.

Motion for appointment of counsel denied; motion for extension of time granted.